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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,
Plaintiff,
v.
BISCOMERICA CORP., *et al.*,
Defendants.

Case No. RG 17-881931

**[PROPOSED] CONSENT
JUDGMENT AS TO
INTERAMERICAN FOODS
CORPORATION AND PRODUCTOS
ALIMENTICIOS LA MODERNA,
S.A. DE C.V.**

- 1. **DEFINITIONS**
 - 1.1 The "Complaint" means the operative complaint in the above-captioned matter.
 - 1.2 "Covered Products" means animal crackers.
 - 1.3 "Effective Date" means the date on which notice of entry of this Consent Judgment by the Court is served upon Settling Defendants.



1 **2. INTRODUCTION**

2 2.1 The Parties to this Consent Judgment are the Center for Environmental Health, a
3 California non-profit corporation (“CEH”) on the one hand, and Interamerican Foods Corporation
4 and Productos Alimenticios La Moderna, S.A. de C.V. (“Settling Defendants”) on the other hand.
5 CEH and Settling Defendants (the “Parties”) enter into this Consent Judgment to settle certain
6 claims asserted by CEH against Settling Defendants as set forth in the Complaint.

7 2.2 On or about March 20, 2017, CEH provided a 60-day Notice of Violation of
8 Proposition 65 to the California Attorney General, the District Attorneys of every county in
9 California, the City Attorneys of every California city with a population greater than 750,000, and
10 to Settling Defendants, alleging that Settling Defendants violated Proposition 65 by exposing
11 persons in California to acrylamide contained in Covered Products without first providing a clear
12 and reasonable Proposition 65 warning (the “Notice”).

13 2.3 Each Settling Defendant is a corporation or other business entity that
14 manufactures, distributes, sells, or offers for sale Covered Products that are sold in the State of
15 California or has done so at times relevant to the Complaint.

16 2.4 On November 9, 2017, CEH filed the Complaint in the above-captioned matter,
17 naming Settling Defendants as original defendants.

18 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court
19 has jurisdiction over the allegations of violations contained in the Complaint and personal
20 jurisdiction over Settling Defendants as to the acts alleged in the Complaint, that venue is proper
21 in the County of Alameda, and that this Court has jurisdiction to enter and enforce this Consent
22 Judgment as a full and final resolution of all claims which were or could have been raised in the
23 Complaint based on the facts alleged therein and in the Notice with respect to Covered Products
24 manufactured, distributed, and/or sold by Settling Defendants.

25 2.6 Nothing in this Consent Judgment is or shall be construed as an admission against
26 interest by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall
27 compliance with the Consent Judgment constitute or be construed as an admission against interest

1 by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this
2 Consent Judgment shall prejudice, waive or impair any right, remedy, argument, or defense the
3 Parties may have in any other pending or future legal proceedings. This Consent Judgment is the
4 product of negotiation and compromise and is accepted by the Parties solely for purposes of
5 settling, compromising, and resolving issues disputed in this action.

6 **3. INJUNCTIVE RELIEF**

7 3.1 **Reformulation of Covered Products.** Upon the Effective Date, Settling
8 Defendants shall not purchase, manufacture, ship, sell, or offer for sale Covered Products that will
9 be sold or offered for sale in California that that exceed the following acrylamide concentration
10 limits, such concentration to be determined by use of a test performed by an accredited laboratory
11 using either GC/MS (Gas Chromatograph/Mass Spectrometry), LC-MS/MS (Liquid
12 Chromatograph-Mass Spectrometry), or any other testing method agreed upon by the Parties:

13 3.1.1 The average acrylamide concentration shall not exceed 75 parts per
14 billion ("ppb") by weight (the "Average Level"). The Average Level is determined by randomly
15 selecting and testing at least 1 sample each from 5 different lots of Covered Products (or the
16 maximum number of lots available for testing if less than 5) during a testing period of at least 60
17 days.

18 3.1.2 The acrylamide concentration of any individual unit of Covered Products
19 shall not exceed 100 ppb by weight (the "Unit Level"), based on a representative composite
20 sample taken from the individual unit being tested.

21 **4. ENFORCEMENT**

22 4.1 **General Enforcement Provisions.** CEH may, by motion or application for an
23 order to show cause before this Court, enforce the terms and conditions contained in this Consent
24 Judgment. Any action to enforce alleged violations of Section 3.1 by a Settling Defendant shall
25 be brought exclusively pursuant to this Section 4, and be subject to the meet and confer
26 requirement of Section 4.2.4 if applicable.



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4.2 Enforcement of Injunctive Relief.

4.2.1 Notice of Violation. In the event that CEH purchases a Covered Product in California that was sold or offered for sale by a Settling Defendant with a best-by or sell-by (or equivalent) date more than 9 months after the Effective Date, and for which CEH has laboratory test results showing that the Covered Product exceeds the exceeds the Unit Level, CEH may issue a Notice of Violation pursuant to this Section.

4.2.2 Service of Notice of Violation and Supporting Documentation.

4.2.2.1 The Notice of Violation shall be sent to the person(s) identified in Section 8.2 to receive notices for Settling Defendants, and must be served within sixty (60) days of the later of the date the Covered Product at issue was purchased or otherwise acquired by CEH or the date that CEH can reasonably determine that the Covered Product at issue was manufactured, shipped, sold, or offered for sale by a Settling Defendant, provided, however, that CEH may have up to an additional sixty (60) days to send the Notice of Violation if, notwithstanding CEH’s good faith efforts, the test data required by Section 4.2.2.2 below cannot be obtained by CEH from its laboratory before expiration of the initial sixty (60) day period.

4.2.2.2 The Notice of Violation shall, at a minimum, set forth: (a) the date the Covered Product was purchased; (b) the location at which the Covered Product was purchased; (c) a description of the Covered Product giving rise to the alleged violation, including the name and address of the retail entity from which the sample was obtained and pictures of the product packaging from all sides, which identifies the product lot; and (d) all test data obtained by CEH regarding the Covered Product and supporting documentation sufficient for validation of the test results, including any laboratory reports, quality assurance reports, and quality control reports associated with testing of the Covered Product.

4.2.3 Notice of Election of Response. No more than thirty (30) days after effectuation of service of a Notice of Violation, Settling Defendants shall provide written notice to CEH whether they elect to contest the allegations contained in a Notice of Violation (“Notice of Election”). Failure to provide a Notice of Election within thirty (30) days of effectuation of

1 service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.
2 Upon notice to CEH, Settling Defendants may have up to an additional sixty (60) days to elect if,
3 notwithstanding Settling Defendants' good faith efforts, Settling Defendants are unable to verify
4 the test data provided by CEH before expiration of the initial thirty (30) day period.

5 4.2.3.1 If a Notice of Violation is contested, the Notice of Election shall
6 include all documents upon which Settling Defendants are relying to contest the alleged violation,
7 including all available test data. If a Settling Defendant or CEH later acquires additional test or
8 other data regarding the alleged violation during the meet and confer period described in Section
9 4.2.4, it shall notify the other Party and promptly provide all such data or information to the Party
10 unless either the Notice of Violation or Notice of Election has been withdrawn.

11 4.2.4 Meet and Confer. If a Notice of Violation is contested, CEH and Settling
12 Defendants shall meet and confer to attempt to resolve their dispute. Within thirty (30) days of
13 serving a Notice of Election contesting a Notice of Violation, Settling Defendants may withdraw
14 the original Notice of Election contesting the violation and serve a new Notice of Election to not
15 contest the violation, provided, however, that, in this circumstance, Settling Defendants shall pay
16 \$2,500 in addition to any other payment required under this Consent Judgment. At any time,
17 CEH may withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the
18 result shall be as if CEH never issued any such Notice of Violation. If no informal resolution of a
19 Notice of Violation results within thirty (30) days of a Notice of Election to contest, CEH may
20 file an enforcement motion or application pursuant to Section 4.1. In any such proceeding, CEH
21 may seek whatever fines, costs, penalties, attorneys' fees, or other remedies are provided by law
22 for an alleged failure to comply with the Consent Judgment.

23 4.2.5 Non-Contested Notices. If Settling Defendants elect to not contest the
24 allegations in a Notice of Violation, they shall undertake corrective action(s) and make payments,
25 if any, as set forth below.

26 4.2.5.1 Settling Defendants shall include in their Notice of Election a
27 detailed description with supporting documentation of the corrective action(s) that they have

1 undertaken or propose to undertake to address the alleged violation. Any such correction shall, at
2 a minimum, provide reasonable assurance that all Covered Products having the same lot number
3 as that of the Covered Product identified in CEH's Notice of Violation (the "Noticed Covered
4 Products") will not be thereafter sold in California or offered for sale to California customers by
5 Settling Defendants, and that Settling Defendants have sent instructions to any retailers or
6 customers that offer the Noticed Covered Products for sale to cease offering the Noticed Covered
7 Products for sale to California consumers and to return all such Noticed Covered Products to
8 Settling Defendants. Settling Defendants shall keep for a period of one year and make available
9 to CEH upon reasonable notice (which shall not exceed more than one request per year) for
10 inspection and copying records of any correspondence regarding the foregoing. If there is a
11 dispute over the corrective action, Settling Defendants and CEH shall meet and confer before
12 seeking any remedy in court. In no case shall CEH issue more than one Notice of Violation per
13 manufacturing lot of a type of Covered Product, nor shall CEH issue more than two Notices of
14 Violation in the first calendar year following the Effective Date.

15 4.2.5.2 If the Notice of Violation is the first, second, third, or fourth
16 Notice of Violation received by Settling Defendants under Section 4.2.1 that was not successfully
17 contested or withdrawn, then Settling Defendants shall pay \$15,000 for each Notice of Violation.
18 If Settling Defendants have received more than four (4) Notices of Violation under Section 4.2.1
19 that were not successfully contested or withdrawn, then Settling Defendants shall pay \$25,000 for
20 each Notice of Violation. If Settling Defendants produce with their Notice of Election test data
21 for the Covered Product that: (i) was conducted prior to the date CEH gave Notice of Violation;
22 (ii) was conducted on the same type of Covered Product; and (iii) demonstrates acrylamide levels
23 below the Unit Level, then any payment under this Section shall be reduced by 100 percent
24 (100%) for the first Notice of Violation, by seventy-five percent (75%) for the second Notice of
25 Violation, and by fifty percent (50%) for any subsequent Notice of Violation. In no case shall
26 Settling Defendants be obligated to pay more than \$100,000 for all Notices of Violation not
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1 successfully contested or withdrawn in any calendar year irrespective of the total number of
2 Notices of Violation issued.

3 4.2.6 Payments. Any payments under Section 4.2 shall be made by check
4 payable to the "Lexington Law Group" and shall be paid within thirty (30) days of service of a
5 Notice of Election triggering a payment and shall be used as reimbursement for costs for
6 investigating, preparing, sending, and prosecuting Notices of Violation, and to reimburse
7 attorneys' fees and costs incurred in connection with these activities.

8 4.3 **Repeat Violations**. If Settling Defendants have received four (4) or more Notices
9 of Violation concerning the same type of Covered Product that were not successfully contested or
10 withdrawn in any two (2) year period then, at CEH's option, CEH may seek whatever fines, costs,
11 penalties, attorneys' fees, or other remedies that are provided by law for failure to comply with
12 the Consent Judgment. Prior to seeking such relief, CEH shall meet and confer with Settling
13 Defendants for at least thirty (30) days to determine if Settling Defendants and CEH can agree on
14 measures that Settling Defendants can undertake to prevent future alleged violations.

15 **5. PAYMENTS**

16 5.1 **Payments by Settling Defendants**. Within ten (10) calendar days of the Effective
17 Date, Settling Defendants shall pay the total sum of \$117,500 as a settlement payment as further
18 set forth in this Section.

19 5.2 **Allocation of Payments**. The total settlement amount shall be paid in five (5)
20 separate checks in the amounts specified below and delivered as set forth below. Any failure by
21 Settling Defendants to comply with the payment terms herein shall be subject to a stipulated late
22 fee to be paid by Settling Defendants to CEH in the amount of \$100 for each day the full payment
23 is not received after the payment due date set forth in Section 5.1. The late fees required under
24 this Section shall be recoverable, together with reasonable attorneys' fees, in an enforcement
25 proceeding brought pursuant to Section 4 of this Consent Judgment. The funds paid by Settling
26 Defendants shall be allocated as set forth below between the following categories and made
27 payable as follows:

1 5.2.1 \$15,830 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).
2 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §
3 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
4 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty
5 payment for \$11,872.50 shall be made payable to OEHHA and associated with taxpayer
6 identification number 68-0284486. This payment shall be delivered as follows:

7 For United States Postal Service Delivery:

8 Attn: Mike Gyurics
9 Fiscal Operations Branch Chief
10 Office of Environmental Health Hazard Assessment
11 P.O. Box 4010, MS #19B
12 Sacramento, CA 95812-4010

13 For Non-United States Postal Service Delivery:

14 Attn: Mike Gyurics
15 Fiscal Operations Branch Chief
16 Office of Environmental Health Hazard Assessment
17 1001 I Street, MS #19B
18 Sacramento, CA 95814

19 The CEH portion of the civil penalty payment for \$3,957.50 shall be made payable
20 to the Center for Environmental Health and associated with taxpayer identification number 94-
21 3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
22 Francisco, CA 94117.

23 5.2.2 \$11,870 as an Additional Settlement Payment ("ASP") to CEH pursuant to
24 Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH
25 intends to restrict use of the ASPs received from this Consent Judgment to the following
26 purposes: the funds will be placed in CEH's Toxics in Food Fund and used to support CEH
27 programs and activities that seek to educate the public about acrylamide and other toxic
28 chemicals in food, to work with the food industry and agriculture interests to reduce exposure to
acrylamide and other toxic chemicals in food, and to thereby reduce the public health impacts and
risks of exposure to acrylamide and other toxic chemicals in food sold in California. CEH shall

1 obtain and maintain adequate records to document that ASPs are spent on these activities and
2 CEH agrees to provide such documentation to the Attorney General within thirty (30) days of any
3 request from the Attorney General. The payment pursuant to this Section shall be made payable
4 to the Center for Environmental Health and associated with taxpayer identification number 94-
5 3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
6 Francisco, CA 94117.

7 5.2.3 \$89,800 as a reimbursement of a portion of CEH's reasonable attorneys'
8 fees and costs. The attorneys' fees and cost reimbursement shall be made in two separate checks
9 as follows: (a) \$75,865 payable to the Lexington Law Group and associated with taxpayer
10 identification number 94-3317175; and (b) \$13,935 payable to the Center for Environmental
11 Health and associated with taxpayer identification number 94-3251981. These payments shall be
12 delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

13 6. MODIFICATION AND DISPUTE RESOLUTION

14 6.1 **Modification.** This Consent Judgment may be modified from time to time by
15 express written agreement of the Parties, with the approval of the Court, or by an order of this
16 Court upon motion and in accordance with law.

17 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
18 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to
19 modify the Consent Judgment.

20 7. CLAIMS COVERED AND RELEASE

21 7.1 Provided that Settling Defendants comply in full with their obligations under
22 Section 5 hereof, this Consent Judgment is a full, final and binding resolution between CEH on
23 behalf of itself and the public interest and Settling Defendants and their parents, subsidiaries,
24 affiliated entities that are under common ownership, directors, officers, employees, agents,
25 shareholders, successors, assigns, and attorneys ("Defendant Releasees"), and all entities to which
26 Settling Defendants directly or indirectly distribute or sell Covered Products, including but not
27 limited to distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees

1 (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on failure to warn
2 about alleged exposure to acrylamide contained in Covered Products that were sold, distributed,
3 or offered for sale by Settling Defendants prior to the Effective Date.

4 7.2 Provided that Settling Defendants comply in full with their obligations under
5 Section 5 hereof, CEH, for itself, its agents, successors and assigns, releases, waives, and forever
6 discharges any and all claims against Settling Defendants, Defendant Releasees, and Downstream
7 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
8 common law claims that have been or could have been asserted by CEH individually or in the
9 public interest regarding the failure to warn about exposure to acrylamide arising in connection
10 with Covered Products manufactured, distributed or sold by Settling Defendants prior to the
11 Effective Date.

12 7.3 Provided that Settling Defendants comply in full with their obligations under
13 Section 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendants
14 shall constitute compliance with Proposition 65 by Settling Defendants, Defendant Releasees and
15 Downstream Defendant Releasees with respect to any alleged failure to warn about acrylamide in
16 Covered Products manufactured, distributed, or sold by Settling Defendants after the Effective
17 Date.

18 **8. PROVISION OF NOTICE**

19 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
20 notice shall be sent by first class and electronic mail to:

21 Howard Hirsch
22 Lexington Law Group
23 503 Divisadero Street
24 San Francisco, CA 94117
25 hhirsch@lexlawgroup.com

26 8.2 When Settling Defendants are entitled to receive any notice under this Consent
27 Judgment, the notice shall be sent by first class and electronic mail to:
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1 Ilan Rosenberg
2 Gordon & Rees Scully Mansukhani, LLP
3 One Commerce Square
4 2005 Market Street, Suite 2900
5 Philadelphia, PA 19103
6 irosenberg@grsm.com

7 Any Party may modify the person and/or address to whom the notice is to be sent by sending
8 the other Party notice by first class and electronic mail.

9 **9. COURT APPROVAL**

10 9.1 This Consent Judgment shall become effective upon the date signed by CEH and
11 Settling Defendants, whichever is later, provided however, that CEH shall prepare and file a
12 Motion for Approval of this Consent Judgment and Settling Defendants shall support entry of this
13 Consent Judgment by the Court.

14 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
15 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
16 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

17 **10. GOVERNING LAW AND CONSTRUCTION**

18 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
19 California.

20 **11. ATTORNEYS' FEES**

21 11.1 A Party who unsuccessfully brings or contests an action, motion, or application
22 arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable
23 attorneys' fees and costs.

24 11.2 Nothing in this Section 11 shall preclude a party from seeking an award of
25 sanctions pursuant to law.

26 **12. ENTIRE AGREEMENT**

27 12.1 This Consent Judgment contains the sole and entire agreement and understanding
28 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
29 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
30 and therein. There are no warranties, representations, or other agreements between the Parties

1 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
2 other than those specifically referred to in this Consent Judgment have been made by any Party
3 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
4 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
5 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
6 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
7 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
8 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
9 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
10 whether or not similar, nor shall such waiver constitute a continuing waiver.

11 **13. RETENTION OF JURISDICTION**

12 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
13 Consent Judgment.

14 **14. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

15 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
16 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
17 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

18 **15. NO EFFECT ON OTHER SETTLEMENTS**

19 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
20 against any other entity on terms that are different than those contained in this Consent Judgment.
21 Settling Defendants may move to modify this Consent Judgment pursuant to Section 6 to
22 substitute a higher Reformulation Level that CEH agrees to in a future consent judgment
23 applicable to products identical to the Covered Products, and CEH agrees not to oppose any such
24 motion except for good cause shown.

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1 **16. EXECUTION IN COUNTERPARTS**

2 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by
3 means of facsimile or portable document format (pdf), which taken together shall be deemed to
4 constitute one document.


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6 **IT IS SO ORDERED, ADJUDGED, AND**
7 **DECREED.**

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10 Dated: _____
11 Judge of the Superior Court

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13 **IT IS SO STIPULATED:**

14 Dated: 13 Feb, 2018

CENTER FOR ENVIRONMENTAL HEALTH

15
16 
17 _____
Signature

18 CHARLIE PIZZANO
19 Printed Name

20 ASSOCIATE DIRECTOR
21 Title

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Dated: February 28, 2018

INTERAMERICAN FOODS CORPORATION



Signature

LIC. JOSÉ CARLOS FRANCO AUTRIQUE
Printed Name

CHIEF EXECUTIVE OFFICER
Title

Dated: February 28, 2018

PRODUCTOS ALIMENTICIOS LA MODERNA, S.A. DE C.V.



Signature

ING. JOSÉ FRANCISCO MONROY CARRILLO
Printed Name

CHIEF EXECUTIVE OFFICER
Title